IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 7205 OF 2005

IN

CRIMINAL APPEAL NO. OF 2005

The State of Maharashtra ... Applicant
(Orig. Complainant)

Versus

Kamal M. Burkul & Anr. ... Respondent
(Orig. Accused)

Mr. Y.S.Shinde, APP, for the Applicant-State.
Mr. Amin Solkar, Advocate, for Respondent - Absent.

CORAM: J.H.BHATIA,J.

DATE : 28th June, 2007.

P.C.

1. Heard Mr. Shinde, learned APP, for State.

2. This is an Application filed by the State seeking leave to prefer an appeal against the order of

acquittal for the offences punishable under Sections 452, 323, 504, 506 read with Section 34 I.P.C.

3. The prosecution case, in brief, is that about three months prior to this incident, the accused No.1, who is a lady constable, had pushed P.W.1 - Durga Kasbe, the complainant due to which she had suffered some fracture. Again on 28.9.1999, accused No.1 allegedly entered the house of the complainant Durga and threatened to cause fracture of her second leg also. At that time, accused No.2 caught hold of said Durga and accused No.1 beat her causing certain injuries.

4. On behalf of the prosecution, in all six witnesses were examined and after hearing the parties and going through the evidence, the learned J.M.F.C., Solapur, acquitted the accused giving benefit of doubt to the accused.

5. The record reveals that the complainant had suffered two scratch marks on right forearm size 1 x 4". As per the medical evidence, these injuries could be possible due to beating. But in the cross-examination, the medical officer admitted that the injuries may also be possible merely because of scratching. The Investigating Officer admitted that at the time of arrest of the accused No.1, similar scratch and

abrasions were also found on the person of the accused No.1, but she was not referred to medical examination. In the circumstances, the learned Magistrate noted that there are two probabilities. Firstly, that the accused might have beaten the complainant and secondly, that a scuffle might have taken place between the complainant and accused No.1. wherein both of them had suffered some injuries. The complainant did not explain the injuries on the person of accused No.1.

6. Taking into consideration the evidence and circumstances noted by the trial Court, I find that the impugned judgment of acquittal does not appear to be illegal, perverse or per-se wrong and, therefore, needs no interference.

7. In the result, the leave refused. The Application stands rejected.

(J.H.BHATIA,J.)